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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,081	02/20/2007	Dietmar Kubein-Meesenburg	5047.1010	9297

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LEYDIG, VOIT AND MAYER
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601

EXAMINER

WOLF, MEGAN YARNALL

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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06/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,081	Applicant(s) KUBEIN-MEESENBURG ET AL.	
	Examiner Megan Wolf	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3/18/10 have been fully considered. Arguments with respect to the rejections of claims 10-20 under 35 U.S.C. 112, first and second paragraph are persuasive and have been withdrawn. All other arguments are moot in view of the new grounds of rejection necessitated by the amendments to the claims.

Claim Objections

2. Claims 17 and 18 are objected to because of the following informalities: on line 1 of claims 17 and 18, "diameter one of" is believed to be in error for --diameter of one of--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-13, 15, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubein-Meesenburg et al. 6,312,471 (hereafter referred to as Kubein-Meesenburg) in view of Chauvin EP0610146 (hereafter referred to as Chauvin).

Kubein-Meesenburg discloses an artificial hip joint, comprising a condyle 2 having a second functional surface and a joint socket 1 having a first functional surface, the first and second functional surfaces being functionally interlinked, wherein the second functional surface is non-spherical in shape and has orbital radii that differ from

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each other in a main functional plane relative to a secondary functional plane rotated by 90° with respect to the main functional plane, wherein the second functional surface is spindle-shaped, and wherein the diameter of the second functional surface in the frontal plane of the patient is between 0.5 and 8 mm greater than a diameter of the functional surface in a sagittal plane (col.2, ll.11-13). While Kubein-Meesenburg discloses the invention substantially as claimed, Kubein-Meesenburg discloses that the second functional surface is non-spherical while the first functional surface is spherical rather than the first functional surface being non-spherical and the second functional surface being spherical. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to switch the non-spherical and spherical surfaces such that the first functional surface was non-spherical and the second functional surface was spherical since it has been held that rearrangement of parts without modifying the operation of the device would be an obvious extension of prior art teachings (*In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) MPEP 2144.04 VI C). While Kubein-Meesenburg discloses the invention substantially as claimed, Kubein-Meesenburg does not disclose that the socket portion is in two parts including a socket part and an inlay wherein the first functional surface is affixable in different positions relative to the joint socket so as to individually adapt the artificial joint to the patient, the different positions corresponding to different locking stages formed by cogging formed between the socket part and inlay.

Chauvin teaches a hip socket, in the same field of endeavor, wherein cogging 3b and 4b is formed between the socket 3 and inlay 4, wherein the articulating surface of

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the inlay is affixable in different positions relative to the joint socket, and wherein the different positions correspond to different locking stages formed by the cogging, for the purpose of being able to modify the angle of the inlay (see the translation of Chauvin page 1, pars.6, 15, and 16).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the hip socket of Kubein-Meesenburg to include separate socket and inlay components, as is well known in the art to allow the polymer bearing component to be replaced as needed, and to allow for these components to be affixable in different positions as taught by Chauvin in order to accommodate various patient anatomy with angular adjustment of the articulating surface.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubein-Meesenburg in view of Chauvin as applied to claim 10 above, and further in view of Serbousek et al. 5,009,665. Kubein-Meesenburg in view of Chauvin discloses the invention substantially as claimed and as discussed above, however, Kubein-Meesenburg in view of Chauvin does not disclose that the inlay is securable by a shrinkage connection.

Serbousek teaches an acetabular cup, in the same field of endeavor, wherein the inlay is inserted into the socket while it is shrunken for the purpose of allowing it to be easily placed into the socket and be secured therein (col.3, ll.47-50).

It would have been obvious to one of ordinary skill in the art to modify the connection between the socket and inlay described by Kubein-Meesenburg in view of

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Chauvin and use a shrinkage connection as this is a well known means for securing an inlay into a socket as taught by Serbousek.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Megan Wolf whose telephone number is (571)270-3071. The examiner can normally be reached on Monday-Friday 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. W./

Examiner, Art Unit 3738

/David H Willse/

Primary Examiner, Art Unit 3738